STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0826

In re the Trust of Eva Marie Hanson Living Trust dated December 11, 1995.

Filed January 30, 2023
Reversed and remanded
Slieter, Judge

Anoka County District Court
File No. 02-CV-19-2215

Kimberly A. Prchal, Blahnik, Prchal & Stoll, PLLC, Prior Lake, Minnesota (for appellants Andria Hanson and Aaron Hanson)

Louise A. Behrendt, Nicholas J. O'Connell, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondent Linda Hanson)

Daniel Kufus, Kufus Law, LLC, Roseville, Minnesota (for respondent Shari Bruns)

Mahesha P. Subbaraman, Subbaraman PLLC, Minneapolis, Minnesota (for *amicus curiae* The Probate and Trust Law Section of the Minnesota State Bar Association)

Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Frisch, Judge.

SYLLABUS

When the unambiguous terms of a trust instrument provide an exclusive method to amend the trust, Minn. Stat. § 501C.0602 (2022) prohibits consideration of any other method of amending the trust found in another writing, such as a power of attorney.

OPINION

SLIETER, Judge

Appellants challenge the district court's determination that the settlor's trust instrument was properly amended by the settlor's attorney-in-fact pursuant to a statutory

short-form power of attorney. Because the trust instrument unambiguously reserves amendment authority to the trust settlor, we reverse and remand.

FACTS

We decide this appeal based on the parties' stipulated facts presented to the district court. Eva Marie Hanson and Lawrence Hanson, wife and husband, had two children, Randy Hanson and respondent Shari Ann Bruns. In 1995, Eva Marie[1] and Lawrence executed identical, revocable living-trust instruments.

Randy and his then-wife Dana Hanson had two children, appellants Andria and Aaron Hanson—the grandchildren of Eva Marie and Lawrence. In "approximately 1997," Randy and Dana divorced. Randy married respondent Linda Hanson in 1998. The same year, Randy was severely injured in an automobile accident, and he later became physically unable to work and began receiving medical assistance. In approximately 2012, Randy also began receiving Social Security disability income and did so until his death in March 2019.

In April 2013, Eva Marie executed a statutory short-form power of attorney naming Shari as her attorney-in-fact. *See* Minn. Stat. § 523.23 (2022). The standard form was checked at letter (N) for "[a]ll powers listed in (A) though (M)" and also checked was the option that the power of attorney would remain effective upon Eva Marie's incapacitation. The "powers listed" involved transactional power over (A) real property, (B) tangible personal property, (C) bonds, shares, and commodities, (D) banking, (E) business

[1] Because many of the parties share a last name, we use first names to prevent confusion.

operations, (F) insurance, (G) beneficiaries, (H) gifts, and (I) fiduciary transactions. Additionally, the powers included authority over (J) claims and litigation, (K) family maintenance, (L) benefits from miliary service, and (M) records, reports, and statements.

In September 2013, Eva Marie and Lawrence amended their 1995 trusts (the 2013 amended trust). Eva Marie's 2013 amended trust provided that, if Lawrence did not survive Eva Marie, the trust assets would be divided equally between Randy and Shari, or their respective then-living descendants if one or both did not survive Eva Marie.

Lawrence died in March 2017. In June 2017, Shari assumed responsibility as successor trustee of the 2013 amended trust, after Eva Marie was deemed disabled as defined by her trust.

In August 2017, at Shari's recommendation, Randy executed a supplemental needs trust to protect his government medical aid and benefits in the event of an inheritance. Randy was named as the beneficiary of the supplemental needs trust and his wife, Linda, was named as the trustee and settlor. The supplemental needs trust provided that it would terminate upon Randy's death and all remaining assets after payment of expenses would be distributed to Linda if she survived Randy. Randy also executed a will and left the entirety of his estate to Linda if she survived him. Randy's will expressly provided that it "intentionally made no provision . . . for [his] children, Aaron Hanson and Andrea[2] Hanson"—the appellants.

[2] We note that Randy's will incorrectly spelled Andria's name.

In September 2017, acting as attorney-in-fact for Eva Marie, Shari amended the 2013 amended trust (the 2017 amended trust). The relevant modification in the 2017 amended trust requires that Randy's share be distributed to Randy's supplemental needs trust instead of to Randy personally if he survives Eva Marie or "his then living descendants" in the event Randy does not survive Eva Marie.

Eva Marie died in October 2018. Shortly thereafter, Shari, as trustee, distributed the balance of trust assets: one-half to herself and one-half to Randy's supplemental needs trust. In March 2019, Randy died, and the residue of Randy's supplemental needs trust was distributed to his wife, Linda.

In April 2019, Andria and Aaron petitioned the district court to invalidate the 2017 amended trust, arguing that the 2013 amended trust was improperly amended. And, as a result, the trust assets should be returned to Shari, as trustee, for distribution pursuant to the 2013 amended trust. Linda subsequently moved for summary judgment, which the district court denied. The parties agreed to a stipulated-facts trial.

The district court concluded that, although the 2013 amended trust expressly limited the power to amend the trust to Eva Marie, the statutory short-form power of attorney "expressly provided [Shari] the authority to amend the trust." Concluding that the 2017 amended trust was valid and, therefore, distribution pursuant to that trust was proper, the district court did not "address the issues pertaining to proper distribution of the Trust assets pursuant to the 2013 [amended trust]." Andria and Aaron appeal.

ISSUE

Did the district court err by concluding that Eva Marie's attorney-in-fact could amend the 2013 amended trust?

ANALYSIS

"The primary function of the court in exercising jurisdiction over trusts is to preserve them and to secure their administration according to their terms." *In re Trs. of Campbell*, 258 N.W.2d 856, 868 (Minn. 1977). The parties agree with the district court that the 2013 amended trust is unambiguous, and we also agree. "Where the trial court has interpreted an unambiguous written document, the standard of review [of that interpretation] is de novo." *In re Tr. Created by Hill*, 499 N.W.2d 475, 482 (Minn. App. 1993), *rev. denied* (Minn. July 15, 1993). A district court's findings of fact are given great deference and shall not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01 ("Findings of fact . . . shall not be set aside unless clearly erroneous . . . ."); *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). Issues of law are reviewed *de novo*. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

We must decide whether article four, section one of the 2013 amended trust limits the power to amend the trust to the trust settlor and, if so, whether the district court erred by concluding that the settlor's attorney-in-fact properly amended the trust.

The Terms of the 2013 Amended Trust

"The court's purpose in construing a trust is to ascertain the intent of the settlor. Where the language of the trust instrument is unambiguous, the intent of the settlor must

be ascertained from the four corners of the agreement, without resort to extrinsic evidence of intent." *In re Tr. Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985) (citation omitted).

Respondents argue that, despite the trust instrument's unambiguous language, the district court correctly concluded that Shari possessed the authority to amend the trust based upon the language in Minn. Stat. § 501C.0602(e), combined with the power of attorney, which granted "[a]ll of the powers" listed in the statutory short-form power of attorney to the attorney-in-fact. *See* Minn. Stat. § 523.24 (2022). We are not persuaded.

Article four, section one of the 2013 amended trust states:

> During my life, I shall have the express and total power to control and direct payments, add or remove trust property, and amend or revoke this trust.
>
> . . . .
>
> I shall have the absolute right to amend or revoke my trust, in whole or in part, at any time. Any amendment or revocation must be delivered to my Trustee in writing.
>
> This right to amend or revoke my trust is personal to me, and may not be exercised by any legal representative or agent acting on my behalf.

The Minnesota Trust Code provides that "[t]he terms of a trust prevail over any provision of this chapter" except as otherwise specifically provided by the trust code.[3] Minn. Stat. § 501C.0105(b) (2022); *see also* Unif. Tr. Code § 105(b), 7D U.L.A. 77 (2018).

[3] The legislature adopted the current Minnesota Trust Code in 2015 and it became effective in January 2016. 2015 Minn. Laws ch. 5, art. 16, § 3 at 111. Although the 2013 amended trust was executed earlier in time, the current Minnesota Trust Code "appl[ies] to all trusts created before, on, or after January 1, 2016." Minn. Stat. § 501C.1304(a)(1) (2022).

Minnesota Statutes section 501C.0602(e), the provision relied upon by the respondents, states that "[a] settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power." Minn. Stat. § 501C.0602(e). However, this subpart does not apply to these circumstances. Instead, the preceding language in subpart (c) of the statute directs our analysis, and limits when a court may look outside of the terms of the trust, including to a power of attorney:

> (c) The settlor may revoke or amend a revocable trust:
>
> (1) *by substantial compliance with a method provided in the terms of the trust*; or
>
> (2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:
>
> (i) if the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor's intent to revoke or amend the trust . . . .

Minn. Stat. § 501C.0602(c) (emphasis added).

The terms of the 2013 amended trust do provide an expressly exclusive method to amend the trust. The 2013 amended trust is unambiguous and the power to amend the trust is (1) *express*, (2) *personal* to Eva Marie, and (3) *absolute*.

"Express" means "[c]learly and unmistakably communicated; stated with directness and clarity." *Black's Law Dictionary* 726 (11th ed. 2019). It is unmistakable that the 2013 amended trust reserves the power to amend the trust to Eva Marie. "Personal" is defined as "of, relating to, or affecting a particular person." *Merriam-Webster's Collegiate*

Dictionary 924 (11th ed. 2014); *see also The American Heritage Dictionary of the English Language* 1317 (5th ed. 2018) (defining "personal" as "[o]f or relating to a particular person"). It is clear that Eva Marie's power to amend the 2013 amended trust is personal to her. "Absolute" means "outright, unmitigated," and "having no restriction, exception, or qualification." *Merriam-Webster's*, *supra*, at 4-5; *see also American Heritage*, *supra*, at 6 (defining "absolute" as "[u]nqualified in extent or degree," "[n]ot limited by restrictions or exceptions," and "[c]omplete and unconditional"). The trust unambiguously provides that Eva Marie's express and personal power to amend the 2013 amended trust is unqualified in that only she could exercise the power to amend the trust. Thus, subpart (c)(1) ends our analysis and compels our conclusion that the district court erred by looking outside the unambiguous terms of the trust.[4] Minn. Stat. § 501C.0602(c).

And, as we previously noted, because the 2013 amended trust explicitly and unambiguously provides a method to amend the trust that is expressly made exclusive, we do not look to another writing to ascertain the settlor's intent. *Id.*; *McLaughlin*, 361 N.W.2d at 44-45 ("Where the language of the trust instrument is not ambiguous, the intent of the settlor must be ascertained from the four corners of the agreement, without resort to extrinsic evidence of intent.").

In addition to the unambiguous language that the power to amend the trust is exclusive and personal to Eva Marie, the 2013 amended trust also unambiguously prohibits

[4] Because our analysis of the language of the trust resolves whether Shari, as attorney-in-fact, may amend the trust, we need not consider whether a statutory short-form power of attorney could ever convey the power to amend a trust, as the *amicus curiae* urge us to.

an agent, such as an attorney-in-fact, from exercising that power. The 2013 amended trust provides that the power of amendment or revocation "may not be exercised by any legal representative or agent acting on [Eva Marie's] behalf." Our court has defined "a person acting as an attorney-in-fact under a POA [as] an agent," and as "stand[ing] in the shoes of a principal." *State v. Campbell*, 756 N.W.2d 263, 271 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Dec. 23, 2008). Thus, Shari, as an agent of Eva Marie, could not amend the 2013 amended trust.[5]

Therefore, we reverse the district court's determination that the 2013 amended trust was properly amended.[6]

Need for Remand

The district court concluded that the 2017 amended trust was valid and, therefore, did not "address the issues pertaining to proper distribution of the Trust assets pursuant to

[5] Linda makes two additional arguments, neither of which were presented to the district court. First, she argues that "[t]he court may modify" the trust if, "because of circumstances not anticipated by the settlor, modification . . . will further the purposes of the trust." *See* Minn. Stat. § 501C.0412(a) (2022). Second, she argues that the 2013 amended trust could be properly amended by a court, pursuant to limited exceptions to the general rule that the terms of a trust prevail. Minn. Stat. § 501C.0105(b) (listing 12 exceptions). Because neither of these arguments was presented to and considered by the district court, neither is properly before this court, and we decline to consider them. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that a reviewing court may only consider issues that were presented to and considered by the district court); *In re Tr. of Lawrence B. Schwagerl*, 965 N.W.2d 772, 784 n.6 (Minn. 2021) (applying *Thiele* in a trust dispute).

[6] We note that the record shows that Shari acted in good faith, and on the advice of counsel, to establish a supplemental needs trust for Randy and to modify the 2013 amended trust accordingly. She appears to have taken reasonable steps to carry out her duties even though she was given incorrect legal advice as to her purported authority to amend the 2013 amended trust.

the 2013 [amended trust]." Because Shari distributed the trust assets as directed by the 2017 amended trust to Randy's supplemental needs trust, instead of to Randy as directed by the 2013 amended trust, and the district court did not address that issue, we remand to the district court for further proceedings to address Andria and Aaron's petition in relation to the improper distribution.

DECISION

Because the unambiguous terms of the 2013 amended trust provide that only Eva Marie could amend the trust, the district court erred by concluding that Eva Marie's attorney-in-fact could amend the 2013 amended trust. Therefore, we reverse and remand.

Reversed and remanded.